IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 23RD MAY 2007 / 2ND JYAISHTA 1929

CRL.A.No. 66 of 1999()

ST.2231/1996 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KODUNGALLUR

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APPELLANT: COMPLAINANT:-

PRAHALADAN, S/O.KUNJAPPAN, KIZHAKKEVEETTIL, KARA DESOM, EDAVILANGU VILLAGE, KODUNGALLOOR TALUK

BY ADV. SRI.K.A.JALEEL

RESPONDENTS: ACCUSED & STATE:

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1. SHANMUGHAN, S/O.KUTTY, KUNNUNGAL KARA, EDAVILANGU, KODUNGALLOOR

2. THE STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM

BY ADV. SRI.M.P.ASHOK KUMAR FOR R1
PUBLIC PROSECUTOR SRI.C.K.SURESH FOR R2

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 23-5-2007 , THE COURT ON 23/05/2007 DELIVERED THE FOLLOWING:

K. Thankappan, J.

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Crl.A. No. 66 of 1999

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Dated this the ay of March, 2007

JUDGMENT

The appeal is filed by the complainant against the acquittal order passed in S.T.No.2231/1996 on the file of the Court of the judicial Magistrate of the First Class, Kodungallur. The complaint was filed under section 138 of the Negotiable Instruments Act. In the complaint it is stated that the 1st respondent borrowed an amount of Rs.60,000/- from the appellant and in discharge of the said debt, he issued a cheque in favour of the appellant and when the cheque was presented for encashment, the same was dishonoured on the ground of insufficiency of funds in the account of the 1st respondent. On receipt of intimation of dishonor of the cheque, a lawyer's notice was caused to the 1st respondent demanding of the amount covered by the cheque. Since the amount was not paid by the 1st respondent, the complaint has been filed before the court. On the side of the prosecution PW1 and PW2 were examined and Exts.P1 to P10 were marked. After closing the prosecution evidence, the 1st respondent was questioned under section 313 of the Code of Criminal Procedure. He denied the incriminating

offence adduced against him and stated that he borrowed an amount of Rs.75,000/- from Divikaran for purchasing a fishing boat and he had issued the cheque after four months at the police station. He also stated that the boat, net and rope were given to Divakaran for Rs.65,000/-, but he did return the cheque and that cheque was misused by the appellant for filing this complaint. To prove the case of the 1st respondent he himself was examined as DW1 and his friend and co-worker of the appellant was examined as DW2. After full fledged trial, the trial court acquitted the 1st respondent on the ground that the appellant could not prove the case against the 1st respondent beyond reasonable doubt.

2. The case of the appellant is that the 1st respondent borrowed an amount of Rs.60,000/- from him and in discharge of the said debt he had issued the cheque in question. The trial court after considering the entire evidence found that the transaction was not the one as narrated by the appellant in the case. The case set up by the 1st respondent in his 313 statement and the evidence adduced by him would prove that the cheque in question was issued to Divakaran. It is relevant to note that the matter had been considered by the local police on a complaint filed by said Divakaran and that matter was also admitted by the appellant.

3. In the above circumstances, this Court is of the view that the impugned judgment requires no interference by this Court. Hence, the appeal stand dismissed as merit less.

K. Thankappan,
Judge.

K. Thankappan,J.

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Crl.A. 66 of 1999

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Judgment
23-5-2007